

National Credit Union Administration

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terms of the golden parachute payment. NCUA's consent will not improve the IAP's position in the event of the insolvency of the credit union since NCUA's consent cannot bind a liquidating agent or affect the provability of claims in liquidation. In the event the credit union is placed into conservatorship or liquidation, the conservator or the liquidating agent will not be obligated to pay the promised golden parachute and the IAP will not be accorded preferential treatment on the basis of any prior approval; or

(3) A payment is made pursuant to an agreement that provides for a reasonable severance payment, not to exceed twelve months' salary, to an IAP in the event of a merger of the Federally insured credit union; provided, however, that a Federally insured credit union must obtain the consent of NCUA before making a payment and this paragraph (a)(3) does not apply to any merger of a Federally insured credit union resulting from an assisted transaction described in section 208 of the Act, 12 U.S.C. 1788, or the Federally insured credit union being placed into conservatorship or liquidation; and

(4) A Federally insured credit union or IAP making a request pursuant to paragraphs (a)(1) through (3) of this section must demonstrate it does not possess and is not aware of any information, evidence, documents or other materials indicating there is a reasonable basis to believe, at the time the payment is proposed to be made, that:

(i) The IAP has committed any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the Federally insured credit union that has had or is likely to have a material adverse effect on the Federally insured credit union;

(ii) The IAP is substantially responsible for the insolvency of, the appointment of a conservator liquidating agent for, or the troubled condition, as defined by § 700.2 of this chapter, of the Federally insured credit union;

(iii) The IAP has materially violated any applicable Federal or state law or regulation that has had or is likely to have a material effect on the Federally insured credit union; or

(iv) The IAP has violated or conspired to violate sections 215, 656, 657,

1005, 1006, 1007, 1014, 1032, or 1344 of title 18 of the United States Code, or sections 1341 or 1343 of that title affecting a Federally insured financial institution, as defined in title 18 of the United States Code.

(b) In making a determination under paragraphs (a)(1) through (3) of this section, NCUA may consider:

(1) Whether, and to what degree, the IAP was in a position of managerial or fiduciary responsibility;

(2) The length of time the IAP was affiliated with the Federally insured credit union and the degree to which the proposed payment represents a reasonable payment for services rendered over the period of employment; and

(3) Any other factors or circumstances indicating the proposed payment would be contrary to the intent of section 206(t) of the Act or this part.

[76 FR 30517, May 26, 2011; 79 FR 12658, Mar. 6, 2014]

§ 750.5 Permissible indemnification payments.

(a) A Federally insured credit union may make or agree to make reasonable indemnification payments to an IAP, including advanced funds to pay or reimburse reasonable legal fees or other professional expenses incurred by an IAP in an administrative proceeding or civil action initiated by NCUA or a state regulatory authority if:

(1) The Federally insured credit union's board of directors, in good faith, determines in writing after due investigation and consideration that:

(i) The IAP acted in good faith and in a manner he or she believed to be consistent with his or her fiduciary duty;

(ii) The advancement or payment of the expenses will not materially adversely affect the credit union's safety and soundness; and

(iii) The IAP has the financial capability or has otherwise made appropriate financial arrangements sufficient to repay the advance if required in accordance with this rule; and

(2) The IAP provides:

(i) A written affirmation of his or her reasonable good faith belief that he or she acted in a manner believed to be consistent with his or her fiduciary duty; and

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(ii) An agreement in writing to reimburse the Federally insured credit union, to the extent not covered by payments from insurance or bonds purchased pursuant to § 750.1(j)(2)(i), for that portion of any advanced indemnification payments which ultimately become prohibited indemnification payments as defined in § 750.1(j); and

(3) The indemnification payments do not ultimately constitute prohibited indemnification payments as defined in § 750.1(j).

(b) An IAP seeking indemnification payments must not participate in any way in the board of director's discussion and approval of such payments; however, the IAP may present his or her request to the board and respond to any inquiries from the board concerning his or her involvement in the circumstances giving rise to the administrative proceeding or civil action.

(c) In the event a majority of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the remaining members of the board may authorize independent legal counsel to review the indemnification request and provide the remaining members of the board with a written opinion of counsel as to whether the conditions in paragraph (a)(1) through (3) of this section have been met. If independent legal counsel concludes that the conditions have been met, the remaining members of the board of directors may rely on the opinion in authorizing the requested indemnification.

(d) In the event all of the members of the board of directors are named as respondents in an administrative proceeding or civil action and request indemnification, the board will authorize independent legal counsel to review the indemnification request and provide the board with a written opinion of counsel as to whether the conditions in paragraph (a)(1) through (3) of this section have been met. If independent legal counsel concludes the conditions have been met, the board of directors may rely on the opinion in authorizing the requested indemnification.

[76 FR 30517, May 26, 2011; 79 FR 12658, Mar. 6, 2014]

12 CFR Ch. VII (1–1–15 Edition)

§ 750.6 Filing instructions; appeal.

(a) Requests to make excess non-discriminatory severance plan payments pursuant to § 750.1(d)(2)(v) and golden parachute payments permitted by § 750.4 must be submitted in writing to NCUA. In the case of a Federal or state chartered natural person credit union, such written requests must be submitted to the NCUA regional director for the region in which the credit union is located. In the case of a Federal or state chartered corporate credit union, such written requests must be submitted to the Director of the Office of National Examinations and Supervision. The request must be in letter form and must contain all relevant factual information as well as the reasons why such approval should be granted. If written concurrence by the state supervisory authority is required, the requesting party must submit a copy of its written request to the state supervisory authority where the credit union is located.

(b) An FICU whose request for approval by NCUA in accordance with paragraph (a) of this section has been denied may file an appeal of that denial with the NCUA Board by following the procedures set out in this paragraph.

(1) The appeal must be in writing and filed with the Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, and must be filed not later than sixty days after the initial determination denying the request.

(2) The Board shall make its determination concerning the appeal based on what is submitted in writing; there shall be no personal appearance before the Board in connection with an appeal under this paragraph.

(3) The Board shall make its determination concerning the appeal within 180 days from the date of its receipt of the appeal. The decision by the Board on appeal shall be provided to the appellant in writing, stating the reasons for the decision, and shall constitute a final agency decision. Failure by the Board to issue a decision on appeal within the 180-day period provided for under this section shall be deemed to be denial of such appeal.